

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

| | | |
|--------------------------|---|----------------------|
| Christopher S. McDaniel, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 2:16-CV-4243-NKL |
| |) | |
| George Lombardi, |) | |
| |) | |
| Defendant. |) | |

NOTICE OF APPEAL

Notice is hereby given that Defendant George Lombardi in the above named case hereby appeals to the United States Court of Appeals for the Eighth Circuit from the December 30, 2016 order denying his motion to dismiss, which included the issue of Eleventh Amendment sovereign immunity from suit.

The United States Supreme Court has held that the denial of motion to dismiss based on a claim of qualified or absolute sovereign immunity from suit is the type of interlocutory order that a defendant may appeal immediately. *Puerto Rico Aqueduct and Sewer Authority v. Metcalf Eddy Inc.*, 506 U.S. 139 144–45 (1993). The Court held that the right involved is the right *not to be sued* in federal court, it involves a fundamental constitutional protection, and it is for the most part lost if the case is allowed to proceed beyond motion practice. *Id.* The immunity of the States from suit is not just

immunity from liability, but from the suit itself. *Id.* at 145–46. The application of the collateral order (*Cohen*) doctrine, permitting immediate appeal, is justified both by the States’ right not be unduly burdened by litigation, and the importance of ensuring that the States’ dignitary interest be fully vindicated. *Id.* at 146. The appeal of the denial of a motion for summary judgment on Eleventh Amendment immunity grounds is an appeal as a matter of right under 28 U.S.C. §1291. *Eng v. Coughlin*, 858 F.2d 889, 894 (2nd Cir. 1988).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically on this 30th day of December, 2016. This Court’s electronic filing system should serve counsel for Mr. McDaniel.

/s/ Gregory M. Goodwin

Assistant Attorney General